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At a COURT of GENERAL SESSIONS of the Peace, holden in and for the City and County of New-York, at the City-Hall of the said City, on *Monday*, the 3d day of *May*, in the year of our Lord one thousand eight hundred and nineteen—

PRESENT

The Honourable
CADWALLADER D. COLDEN,
Mayor.
P. A. JAY, *Recorder.*
E. W. KING, *Alderman.*
P. C. VAN WYCK, *Dist. Attorney.*
JOHN W. WYMAN, *Clerk.*

(INDICTMENT—DESCRIPTION OF GOODS—FALSE PRETENCE.)

JAMES CONGER'S CASE.

VAN WYCK, *Counsel for the prosecution.*
PRICE, *Counsel for the defendant.*

To set forth a merchant's bill of parcels, with the usual abbreviations, in an indictment for obtaining the goods, contained in such bill, by false pretences, is insufficient.

No false pretence, made *after the delivery of goods*, can support an indictment for obtaining such goods by false pretences.

The false pretence must be predicated on some matter or thing pretended *then* to be in existence, but which, in truth, is not.

An indictment for this offence should contain a full, explicit and categorical denial of the truth of the pretence or pretences charged.

The false pretence, charged in the indictment, should be denominated as such, and not as a false *representation.*

An indictment, which alleged that the defendant pretended that *he was a man of wealth and credit;* and, in a subsequent part, contained an explicit averment that he was not; is thus far sufficient; but where the indictment further alleged that the prosecutor, trusting to the *promises* and *assurances* of the defendant, and *being deceived by his false pretences*, delivered the goods, it was held insufficient.

The indictment should allege, that the false pretence or pretences charged, was or were the inducement to the delivery of the goods. (See 1 vol. City-Hall Recorder, p. 140, and ante, p. 61.)

During the term of January last, the defendant was indicted for obtaining the goods and chattels of Alexander Watson, by false pretences, on the 15th of December then last, against the form of the statute.

The indictment alleged, that the defendant, intending to impose upon Watson, and to cheat and defraud him, "did falsely pretend to the said Alexander Watson, that he, the same James Conger, was a person of *wealth and credit*," and wished to purchase a quantity of goods of Watson. That the defendant examined a quantity of goods, and selected certain articles, which are specified in the indictment, by the insertion of what appears to be a copy of a bill of parcels, with the qualities, quantities, prices of each article, and the amount in figures, and with the abbreviations commonly used by merchants in their accounts.* It is averred that the goods so selected by the defendant, were of the value of three hundred and thirty-six dollars, and ninety-five cents. And that he ordered them to be sent to his store. "And then and there represented, that upon the delivery of the said goods, the money would be paid." "That trusting to the *promises and assurances* of the defendant, *and being deceived by his false pretences*," Watson sent the goods to the store of the defendant. "Whereas, in truth and in fact, the defendant was not a person of wealth and credit, as he had falsely represented." And whereas "he had not the *money ready to pay for the said goods on the delivery, as he falsely pretended.*"

The indictment then proceeds to aver other facts, viz: that the defendant did

* The bill of parcels was left with the grand jury, with directions to insert the items properly in a blank left in the indictment for that purpose, should they find the bill; but, probably mistaking the directions of the public prosecutor, and without exhibiting it to him, they inserted the bill of parcels verbatim, and brought the indictment, in that form, into court.

not pay any thing for the goods. That he intended to cheat Watson of them. That after he got the goods in his possession, instead of paying for them, he sent Watson a check for the money, which the defendant represented was good, but which was of no value, and which he knew would not be paid.—That he gave the check and made the false representation that it was good to induce Watson to leave the goods in his possession, till he had assigned them to other persons. The indictment also avers, that the defendant has never paid, and never intended to pay, any thing for the goods. And concludes with the usual averments, that by the said false pretences the defendant fraudulently obtained the goods of Watson, against the form of the statute, &c.

To this indictment the counsel for the defendant, on the first day of February last, demurred generally. He cited several cases in support of the demurrer, and particularly the case of Cromwell and Field, decided in this court in the term of February, 1813, (3d vol. of the City-Hall Recorder, p. 31.)

Van Wyck contra.

The mayor said, that at some subsequent time he would deliver the opinion of the court in this case. Prosecutions for obtaining goods by false pretences had become so frequent in this court, that he deemed it highly important, in a commercial community, that the principles applicable to this particular species of offences, should be generally known.

On the first day of this term, the mayor delivered a written opinion, which in its commencement contains an analysis of the indictment in the words above stated, and then continues as follows:

The court is now to decide on the validity of the indictment, or, in other words, supposing all the facts stated in the indictment to be true, or to have been proved, whether the defendant could be subjected to punishment, as an offender either against the common or statute law. For it is now settled, that upon an indictment sufficiently stating a a common law offence, a defendant may be convicted, though it concludes against the form of the statute, if the evidence should not be sufficient to support the charge under the statute. (5 T. R. 162. 3 Bac. Ab. 571.)

A due consideration of the indictment will very much abridge the matter which, in the opinion of the court, is now properly submitted for their determination.

A general objection might be taken as to the manner in which the goods and chattels, charged to have been obtained, are described in the indictment. The articles obtained must be described, in a charge of this nature, with as much accuracy and particularity, as goods stolen must be, in an indictment for larceny. It may well be questioned, whether describing the goods, by inserting a copy of the bill of parcels, with their names, quantities, qualities, prices and amounts in figures, and with abbreviations, intelligible only to mercantile traders, as for instance: 1 pe. fine blk cloth 22yds. 20s. $71.50. 2 do. superfine mixed & brown, 37¼—$5.75—211.19—however short and convenient it may be, is sufficient.

Though it be not necessary to describe the false pretences with greater minuteness than that with which they were presented to the mind of the party injured, at the time the imposition was practised, yet, it is well established, that they must be stated particularly and truly; for where it was alleged, that the defendant had said, that he had paid a sum of money into the bank of England, and it was proved that he had merely said that the money had been paid at the bank, the variance was held fatal. There must also be substantive, absolute negations of the facts which were represented. It is not sufficient, indeed it is not necessary, (1 Starkie, 90,) to charge that the defendant did "*falsely* pretend;" but there must be formal averments that his representations were untrue. (2 Starkie, 473, in notes. 3 Chitty, 999. 2 R. R. 581. 1 Camp. 212, 495. 2 East, 30.)

The indictment in this case states, first, that the defendant pretended he was a person of wealth and credit, and secondly, that he represented "that on the delivery of the goods the money would be paid." These are the only pretences made by the defendant previously to the goods having been delivered to him; of course they could not have been obtained on any others.—

However false and fraudulent his subsequent representations may have been, they never could have been the means of obtaining the goods. All the charges, therefore, in the indictment which relate to the defendant's conduct after he obtained possession of the goods, and to the pretences which he made to induce, as the indictment states, the prosecutor to leave the property in his possession, until the defendant could make a fraudulent disposition of them, we consider as absolutely nugatory, and the indictment would be just as good, as it now is, if all these allegations, as to the defendant's subsequent conduct, were omitted.

This indictment seems to have been framed on a precedent found in Chitty, (3 vol. 1007,) where goods were sent by a shopman, according to order, and delivery of them obtained from him by giving him a spurious draft, which was represented as good. But it may be observed, that in that case, all the representations and false pretences were made before the shopman parted with the possession of the goods, and of course before they were obtained by the defendant.

The only false pretences, therefore, charged in the indictment are, in the opinion of the court, the two which have been before specified.

The first, that the defendant represented himself to be a person of wealth and credit, is sufficiently negatived by a subsequent, categorical averment, that, in truth and in fact, the defendant was not a person of wealth and credit, as he had falsely pretended. But there is no such negation as to the truth of the second representation, "that upon the delivery of the goods the money would be paid."

There is an averment that the defendant "had not the money ready to pay for the goods, on the delivery, as he falsely pretended"—but this is not the denial of the truth of any pretence charged in the indictment.

With respect to this last-mentioned pretence, it might be objected also, that it is not laid in the indictment as a false *pretence*, but it said that the defendant *represented* that upon the delivery of the goods the money would be paid for them. And it might be further objected, that this is not a representation of a fact, but rather a promise as to what the defendant would do after the delivery.

It is stated in the indictment, that the defendant falsely pretended that he wished to purchase a quantity of goods of the prosecutor. There is, not only, no negation of the truth of the fact here represented, but, on the contrary, the indictment repeatedly avers, a little inconsistently it would seem with the nature of the whole charge, that the defendant did purchase the goods of the prosecutor. It may be said, if he purchased them, he did not obtain them by false pretences; and that so the indictment is inconsistent. Upon the whole, the court considers the pretence that the defendant was a person of wealth and credit, the only one in the indictment properly charged and properly negatived.

The sole question, then, for the court now to decide is, whether an indictment, which charges a person with having obtained the goods of another by falsely representing himself a man of wealth and credit, can be supported.

This question might be disposed of, to the satisfaction of the court, in a very few words. But indictments of this nature are becoming so frequent, the cases in the books are so numerous; and the decisions of the courts so often appear at variance with each other, that it becomes very desirable that some general rules upon this subject should be distinctly laid down and established; so that it may be known, with some sort of precision, what does and what does not constitute an offence of this description.

We are well aware that the decisions of this subordinate tribunal will not be received as settling the law on any point; and we have no desire that they should. The rules we adopt will only govern our decisions, till they shall be reversed by superior authority.

Previously to the enactment of any statute on the subject of cheating, a person might, by many deceitful and fraudulent contrivances or pretences, obtain the property of another, without being punishable by a criminal proceeding. For no fraud could be the object of a criminal prosecution, unless it were of that kind which, in its nature, was cal-

culated to defraud numbers: as false weights or measures, false dice, &c.—(Rex v. Wheatly, 2 Bur. 1025. People v. Babcock, 7 John. Rep. 201. 1 Hard. 187, 188.)

The fraud charged in the indictment which we are now considering, is certainly not of this description, and therefore we can have no hesitation in deciding that this is not a good indictment at common law.

It was very early perceived that some statutable provision was necessary to punish a great variety of frauds, which might be practised with impunity under the common law. The parliament of England made a partial provision on this subject, by the statute of 33 Hen. VIII. c. 1, which enacted, that if any man should fraudulently get into his possession the goods, chattels or other things of another, by colour of any false privy token, or counterfeit letter, he should suffer punishment.

The provision of this statute was construed to extend only to frauds committed by the exhibition of some visible sign or tangible substance, as a token, whereby a person was defrauded of his goods, in consequence of his having been induced to part with them upon a credit given to the token beyond, or other than, what the person, obtaining the goods, would have had without the token. (1 Burns' Just. 355. 1 East's C. L. 827.)

Cheats or frauds, founded solely on mere oral representations, where no sign or token was used, were impunishable under this statute. The English parliament, therefore, again legislated on this subject; and passed the statute of the 30th of George II. c. 24, by which it is enacted, that all persons who, by false pretence or pretences, should obtain from any person money, goods, wares or merchandizes, with intent to cheat or defraud any person of the same, should be deemed offenders.

Our legislature has adopted this statute, with some alteration as to the thing obtained, and as to the object of the fraud. By our act the offence is made to consist in knowingly and designedly, by false pretence, obtaining from any person any money, goods or chattels, "or other effects whatsoever," with intent to defraud or cheat any person, "or body politic or corporate."

We have no statute similar to the statute of Henry VIII. relative to false tokens or counterfeit letters, because the statute next precedingly mentioned is a full provision in respect to the offences contemplated by the statute of Henry VIII. For though every false pretence would not be a false token, yet every false token, accompanied with a false representation, (as it necessarily must be, or it never could be the means of gaining credit,) and every counterfeit letter, by which money or effects are obtained, must be a false pretence.

It is obvious, then, that this statute has a very extensive application, and it is not surprising that its operation should have been frequently invoked in dealing and commercial countries.

We do not propose to refer to the numerous, and sometimes, apparently, contradictory cases on this subject, to be found in the books, with the view we have before mentioned; we intend to endeavour to draw from the decided cases some rules which will be generally applicable. We do not think that this will be attended with so much difficulty as might be at first supposed, because we believe, that the seeming opposition of authorities frequently arises from not observing whether the indictments, to which they refer, be at common law, under the statute of Henry VIII. or under the statute against false pretences.

We should be involved in inextricable difficulties if we were to adopt the lexicographic definition or explanation of the word pretence. We must endeavour to find its legal or technical meaning; and this we can only do by referring to cases in which its legal import has been considered.

1st. A false pretence must relate to an existing fact. Any representation as to what will or will not happen, cannot, in our opinion, be considered as a false pretence. This marks a distinction between a false representation or a false promise and a false pretence.

So, if a man obtains goods by promising to pay cash for them, or to pay for them at a future time, or gives his note for them, with assurances that it shall be

paid at its maturity, when, at the same time, he does not intend to pay; these are false promises and not false pretences—because there is no pretence that any fact exists, there is no representation as to what is then presently untrue. So, if goods were obtained by promising to give the note or endorsement of a third person, these are equally false promises; but it would be different, if one were to obtain goods by falsely representing or pretending, that a third person had promised to give his note or endorsement for them. If one were to obtain goods by falsely representing that he had been commissioned to ship them, or that he had made a bargain to sell them for an advanced price, these would be false representations as to existing facts, and therefore might be considered as false pretences; we say *might be* so considered, because it will be seen in the sequel, that we are not of opinion, that every misrepresentation as to an existing fact, must be taken as such a false pretence as will support an indictment. For what might be considered as sufficient for this purpose under some circumstances, might not be so under others. Under some circumstances, such falsehoods might be very imposing, under others, incapable of deceiving any rational creature. The consideration of these circumstances may be the province of the jury. (2 East's Cr. Law, 828.)

It has been said, that it is no objection that the offence consists in the representation of some transaction to take place at a future time. (3 Wil. Ab. 549.) And for this, the case of the King against Young and others, (3 T. Rep. 98,) is cited. But there, though the race, according to the representation, was to take place the next day, yet it was pretended that the bet had been previously made, and the averment of falsehood is, that the bet had not been made. It is obvious, therefore, that the representation as to the bet, and not as to the race, was considered as the false pretence.

2dly. We believe it may be stated, as a general rule, at least, that there must be a false representation by words written or expressed, to constitute a false pretence. That is, words used by the offender himself, or used by another, and assented to by him. We do not believe that a mere false show or appearance, however specious or successful it may be, will support a prosecution under this statute. As, if a person, to give himself a false credit, and with an intent to deceive, should fill his store with empty bales or boxes, and thereby make it to be believed, that he was doing great business; or if he should go to a counter with a purse full of good or bad guineas, or with genuine or counterfeit bank notes, and obtain goods by inducing a belief, by such show, that he intended to be a cash purchaser: we do not think that one, by exhibiting these false appearances, would subject himself to a criminal prosecution, any more than if he obtained a false credit by living in a style beyond his means, or any more than if he should, without ever intending to pay for it, obtain credit for a pound of tea, by going to a grocery store in a coach and six.

We think the limitation of the legal or technical meaning of the words false pretences, presented by the two foregoing rules, not only sanctioned by all the authorities, but it appears to the court absolutely necessary. For if we extend the meaning of these words beyond these limits, it is impossible to say what may not be taken as a false pretence. Every expression, act or show, used to enhance the appearance of, or give a fictitious value to, the articles of a man's trade, a parade of living adopted to raise or maintain a credit by a show of wealth, might be considered as criminal offences.—Every person who should obtain goods on credit, when he knew he was bankrupt or could not pay for them, or who should give, for articles purchased, a check or note which he knew he had not, and would not have funds to meet, might be considered as obtaining goods by false pretences. But without these false appearances be supported by some verbal false representations, we do not believe they can be considered objects of criminal prosecutions.

We will not say that there may not be exceptions to this general rule, that words or declarations, used by the party, or assented to by him, are necessary to constitute a false pretence; but we can-

not anticipate an exception, and it is very certain, that no one is afforded by any of the very numerous cases relative to this crime, which are to be found in the English and in our own books. Even under the statute of Henry VIII. relative to false tokens, there is no instance of an indictment being supported, where the token was not presented with some verbal or written misrepresentation.

Where the offence is committed by several, as it may be, it is not necessary that they should all speak; but in such case, as in many other instances, the words and acts of one are to be imputed to all parties present, and co-operating in the perpetration of the crime. (Young's case, 2 Leach's Crim. Cases, 572. 3 T. Rep. 98. S. C.)

It is very possible, also, that dumb persons may be convicted under this statute; but then we must recollect that signs are their language. It is one in which they are allowed to speak as witnesses. Nor would it be a just exception to the rule, if a person should be convicted, who made a false representation of an existing fact by signs, under the pretence of being dumb.

There is a class of cases that are arranged in the books under this head, which might appear not to be in conformity with the general rule we have adopted. They are those of persons who have been convicted and punished for selling by false weights or measures, for playing with false dice, or for selling adulterated articles of provisions, &c. But it may be observed, that these convictions, where there have been no false declarations or representations, have ensued on prosecutions at common law; and the parties have been convicted, not of obtaining goods by false pretences, but as cheats in the way of trade, or as committing offences against the public health.

3dly. A false pretence must not only be a misrepresentation, as to an existing fact, but it must be a wilful misrepresentation, or in other words, the party must know that he is making a false representation. This is not only implied by the word pretence itself, but is shown by other words connected with it in the statute. The charge in the indictment must be that the money, goods or effects were knowingly and designedly obtained by the pretence. Without these allegations, the indictment would be bad; and if a defendant on his trial can show that what is imputed to him as a false pretence, was a representation made through mistake or misinformation, he would undoubtedly be exonerated.

4thly. A fourth general rule is, that the false pretence must be one to which a jury may believe the person defrauded, reasonably might, and actually did give credit. It has been contended by the defendant's counsel, in the argument of this case, that this is too broad a description or definition of the false pretences, which are punishable under the statute. He contended that a pretence, to be indictable, must be such an artful misrepresentation as common prudence or vigilance would not be sufficient to guard against. That a mere naked lie, though told with a premeditated design fraudulently to obtain the effects of another, and though its object be accomplished, is not a false pretence within the meaning of the statute. That if one be so weak or negligent as to suffer himself to be imposed upon by a representation, the falsehood of which common sagacity or common precaution might detect, the law will not punish one who is guilty of such an imposition. In support of his doctrine the defendant's counsel has referred to many authorities; and no doubt they establish that these principles governed the decisions of the English courts, previously to the statute of the 30th George II. The cases referred to, all relate to indictments at common law, or indictments under the statute of Henry VIII., against obtaining goods, &c. by false tokens or counterfeit letters. But the decisions of the English, and of our own courts, under the statute relative to false pretences, do not require that the pretences should be of that artful and deceptive character.

It has been said, that the law never intended to punish one man for making a fool of another. This saying might have been warranted previously to the statute against false pretences. But it seems that statute was intended to protect the weak and credulous against im-

position and fraud. In the case of the King against Young and others, Ashurst, justice, speaking of this statute says, "The legislature saw that all men were not equally prudent, and passed this statute to protect the weaker part of mankind." (2 Lea. Cr. L. 572. 3 D. and East, 98, S. C.)

In the same case of Young, Buller, justice, says, "The legislature thought the former statute was too limited, and therefore the 30th of George II. was passed." "The statute, therefore, clearly extends to cases which were not the subject of indictment at common law." Grose, justice, in giving his opinion in the same case of Young, uses the following expressions; "The statute created a new offence, for it declares, that all persons obtaining money by false pretences, with an intent to cheat, shall be offenders against the law, and the public peace. That particular offence is made an offence against the law, whether it was so or not before."

These principles have been adopted in their fullest extent, by our own supreme court, in the case of the People v. Johnson, (12 Johns. Rep. 292.) Chief justice Thompson, in delivering the opinion of the court, says, "The statute of Henry VIII. extended the common law rule, but still required some false token to be used. But this being found too limited to prevent the evil intended, the statute of George II. was passed, which adopted the more general term '*false* pretences.'"

It seems very clear then, that the statute under consideration must be taken to have created a new offence, and that we are not to look to authorities founded on the pre-existing law to limit the operation of this legislative act.

The English judges were certainly of opinion, that a court could not limit the application of the terms false pretences, used in the statute, to any description of false pretence. That a court could not say, that a man may fraudulently obtain the goods of another by a false pretence with impunity, because the pretence was not cunning, artful or calculated to deceive, where there was ordinary understanding, prudence or vigilance. Ashurst, justice, in the case of Young and others, before cited, says, "The words of the statute are very general," "and we have no power to restrain their operation." "The ingredients of this offence," says justice Buller, in the same case, "are the obtaining money by false pretences, and with an intent to defraud." "If the intent be made out, and the false pretence used in order to effect it, it brings the case within the statute."—These explanations of the meaning of the terms false pretences, have also been sanctioned and adopted in our own courts. In the case before cited, of the People against Johnson, chief justice Thompson says, "The statute of George II. has been considered, in England, as extending to every case where a party has obtained money or goods by falsely representing himself to be in a situation in which he was not, or by falsely representing any occurrence that had not happened, *to which persons of ordinary caution might give credit.* The ingredients of the offence are, obtaining the goods by false pretences, and with an intent to defraud. In this case there was a false pretence, and one too very naturally qualified to deceive and impose upon the seller, and that pretence was false."

We agree in opinion with the English court, that we have no power to restrain the operation of the words of the statute. And yet it does not follow, that every mere naked and improbable lie, or that every false assertion, however absurd or irrational, or however it may be contradicted by contemporaneous circumstances or appearances, will be sufficient to support an indictment under the statute. If a person, in the attire of a mendicant, were to present himself as a merchant of large fortune—if one were to represent that he was established as a great trader in the adjoining house, or, if he were to say, that his friend who was standing at his elbow, would endorse a note for goods to be purchased, and by these or such like false pretences obtained goods, the pretences might be insufficient to support an indictment; not because they were not false pretences within the meaning of the statute, but because no jury could be induced to believe that such palpable falsehoods could

be the grounds of credit, or that any man could be defrauded of his property by such improbable means. But it must be for a jury to determine this, and if they do find that the pretence was knowingly and designedly used, with an intent to cheat and defraud, and that property was obtained by the pretences, they find all that is necessary to support the indictment.

It is in this sense that we understand the qualification in the case before cited, by which the chief justice appears to limit the application of the words false pretences. "They must be such," says he, "to which persons of ordinary caution might give credit."

We also understand this to be the law, when a deception is attempted on a person, who may be supposed to be possessed of ordinary caution. But what would or what would not be ordinary caution, is a question for a jury, which may depend on a thousand circumstances to be considered on a trial. It is a matter which a court never can decide on the face of an indictment.

We think a court ought not to be disposed to restrain the operation of this statute. If a man, by a wilful falsehood, obtains the property of another, does he not deserve punishment as much as one who should feloniously take it? Why should he be permitted to answer to a criminal charge; True, I have, by wilful lies, obtained your property, but I am not to answer for it, because my representations were mere lies? We think with Lord Kenyon, (2 Leach, 571,) "That when the criminal law happens to be auxiliary to law of morality, we should not be anxious to explain it away." And we agree with another eminent English judge, that "It is safer to adopt what the laws have actually said, than to suppose what they meant to say."

The indictment, in the case we are now deciding, charges, that the defendant unlawfully, knowingly and designedly did falsely pretend to the prosecutor, that he was "a person of wealth and credit." If the jury find this allegation supported by the evidence, then they must find that the defendant did use a false pretence; but they must further inquire, and they, and not the court, must determine, whether it can be supposed or believed, that by means of this pretence the defendant obtained the effects of the prosecutor. And if they find that to be the fact, they must, if there were no other objections to the indictment, pronounce the defendant guilty.

There is not to be found any report of a conviction for a pretence precisely similar, but there is the precedent of an indictment for a false representation, so substantially like this, that the one cannot be distinguished from the other in principle. In the Crown Circuit Companion is the form of an indictment for obtaining goods by false pretences. (C. C. C. 303, 304, 6th Eng. edit.) The first count states the false pretences to have been, that the defendant was a merchant of great fortune, who wanted to purchase horses to send them abroad, and was then a housekeeper at Penje common. In the second count, the pretences are stated to have been the same, with the omission of what relates to the horses. But the third count alleges that the false pretence was nothing more than that the defendant was then a merchant. This precedent has been adopted by Wentworth, Chitty, Starkie and other respectable writers on the practice of criminal law. (6 Went. S. P. Index, tit. Frauds, Eng. ed. 2 Starkie, 473. 3 Chitty, 1006, Eng. ed.)

Precedents, it is true, are not always the most conclusive authority; but still, ancient and long established forms have always been received as expounding the law, and as manifesting the sense in which a statute has been accepted. Indeed, the English judges have gone so far as to say, "It is better that faulty precedents should not be shaken, than that the law should be uncertain." (2 T. Rep. 24.)

If, then, these precedents may be received as establishing that a false pretence, that a man was a merchant might support an indictment under the statute, we may conclude that the false pretence set forth in the indictment under consideration, that the defendant was a person of wealth and credit, may warrant a conviction and judgment.

5thly. A fifth general rule is, that it must be alleged in the indictment, and it

must appear on the trial, that credit was given to the false pretence, and that by it the person defrauded was induced to part with his property. If credit was given independently of the false pretence, or if the property was obtained by any other inducement, then the indictment cannot be supported. (2 East's C. Law, c. 18, s. 8, p. 831. 1 City-Hall Rec. p. 140, Lucre and Markford's case.)

The indictment, on which we are now adjudicating, states, that the prosecutor, trusting to the *promises* and *assurances* of the defendant, and being *deceived* by his false pretences, delivered his goods to him. It appears then that the prosecutor was deceived by the false pretences: this he may have been, and yet the false pretences may not have been the inducement for parting with his goods. And it is alleged that the goods were not obtained by the false pretences, but by the prosecutor's trusting to the promises and assurances of the defendant. It is true, that in the concluding general clause it is averred, that the defendant, by means of the false pretences "aforesaid," obtained the goods. But this is inconsistent with the previous allegation, that the prosecutor delivered the goods, upon his faith in the promises and assurances of the defendant. We are of opinion that this does not charge the defendant with any offence either at common law, or under the statute. In our opinion the indictment is bad,

1st. Because the property, charged to have been obtained, is insufficiently described.

2d. Because, in respect to all the pretences, except that which relates to the defendant's wealth and credit, the falsehoods of the pretences are not sufficiently averred.

3d. Because the indictment avers that the defendant purchased the goods, which is inconsistent with his having obtained them by false pretences.

4th. Because, though it be alleged that the prosecutor was deceived by the false pretences, yet it is averred that he was induced to part with his property upon his faith in the promises and assurances of the defendant.

We therefore give judgment in favour of the defendant on the demurrer.

REMARKS—DECISIONS COLLECTED.

With much deference we enter upon a brief description of the term *false pretence*, contained in the act, according to the popular acceptation, and as it would be understood by the generality of mankind: Any false or deceptive allegation, representation, token, show, artifice or contrivance whatsoever, the repetition of which would be a public injury, not involving a felony, wilfully and designedly made, and calculated to deceive or circumvent numbers of men, as well of weak minds as those of ordinary prudence; by means of which a person is induced, either to deliver his or her money, goods or effects, or, to part with some valuable vested right, interest or demand to another, without an equivalent. We find, by recurring to the etymology of the term *pretence*, that it is derived from the Latin words *præ*, before, and *tendo*, to hold forth—to spread—*to lay a snare*, &c.

It would, perhaps, be presumption to pronounce with confidence that, in this enlarged sense, such must have been the meaning of that term, within the contemplation of our legislature; but if their object in passing the act, (1 vol. R. L. p. 410, sect. 13,) as must be conceded, was *to prevent and punish fraud*, which has been defined "Any kind of artifice by which another is deceived," (1 Mad. Chan. p. 205,) and has been truly described as infinitely more devious in its windings than a serpent, then we do not hazard much in saying, that the meaning of a *false pretence*, in this act, *ought to be* co-extensive with the description above laid down: otherwise, the legislature have fallen short, very short, of their object; and it is manifest that many shameful frauds and impositions may be practised with impunity, and the great ends of public justice defeated.

We conceive it useful, in this place, to collect the decisions on this subject which have occurred in this court, and may be found in this work.

An indictment cannot be supported for obtaining goods by false pretences in a case where a contract is made between the vendor and vendee for the payment of cash on the delivery; although

the vendee, at the time the contract is made, makes a false representation to the vendor, in relation to his name and occupation; and, without paying the cash, procures a cartman, loads the goods, and deposits them at the store of a third person: the vendor still continuing with the goods. (1 vol. of the City-Hall Recorder, p. 7.)

It seems, in such a case, the right of property is not devested. *ibid.*

To constitute an indictable offence, the representation must be such, that ordinary prudence cannot guard against it. *ibid.*

Fraud, rather than *force*, is necessary to support an indictment for obtaining goods by false pretences, under the statute. *ibid.* p. 60.

Where A falsely pretends to B that he had procured for B a bill of exchange on a foreign country, of C, in whose possession it was, ready to be delivered; and B, in full confidence that A had the bill in his possession, procured from C, pays to A a sum of money in payment for the bill, under the expectation that it would be simultaneously delivered; A is guilty of obtaining that money by false pretences: but it would have been no more than a breach of trust, had B previously paid to A the money to procure the bill, and A had failed in performing his promise. *ibid*, p. 83.

Fraud in obtaining a bill of lading. *ib.* p. 89.

To deprive a man of an equitable right or interest, is an offence within the statute. *ibid.*

The falsity of a pretence may be inferred from circumstances. *ibid.*

Divers false pretences may be laid in the same count, in an indictment, and need not all be proved. *ibid.*

Substance of the statute, relative to fraud, extracted. *ibid, n.*

In accomplishing a fraud, forgery was committed. *ibid*, p. 116.

A man, by falsely representing himself to be in a particular situation, obtained goods, which, without such false representation, he would have been unable to obtain: held guilty under the statute. *ib.*

The defendant drew divers checks on a bank, falsely representing that he had money deposited there, and thereby obtained money—held no offence, under the statute. *ibid*, p. 138.

Here note, the English authorities, on this point, overruled. *ibid.*

Obtaining money, on an assertion, grounded merely on the personal responsibility of the defendant, is no offence under the statute. *ibid.*

When full reliance is not placed in the false pretence, and the delivery of the goods is not consummated, the offence doth not fall within the statute. *ibid*, p. 7, 140.

Where P represented to L that she lived with N, and that she would take an article, which L had for sale, home to N, her mistress, and shortly return such article, or the money, and afterwards she returned neither; and it appeared, that at the time P made such representations, she did not live with N; it was held, that such false representation did not fall within the statute against obtaining goods by false pretences. *ib.* p. 164.

A stranger availing himself of knowledge, previously obtained, touching the private dealings of two individuals, who, taking advantage of such knowledge, artfully founds a plausible story thereon, which he relates to one of them, by means of which he is induced to part with his money, is guilty of obtaining that money by false pretences. (3 vol. of the City-Hall Recorder, p. 3.)

An indictment which alleged, that by means of divers false pretences, specifically stated, the defendant obtained $10 *in money* of the prosecutor, is not supported by proof that he was deprived by such false pretences of *a bank bill of* $10. *ibid.*

An indictment alleged that S. pretending to C. that he, S., had the sum of $25 in $5 bills in his pocket-book, which bills would not pass without a discount, and, intending to cheat and defraud C. of his money, delivered the said pocket-book to him; and that C. thereupon, at the request of S., loaned him $10; supposing and believing that the sum of $25 was in the pocket-book; whereas, in truth and in fact, no money was therein. It was held, that this indictment, on its face, did not contain an offence, against which ordinary prudence could not guard; and that it was not supported by

proof that S., immediately before the delivery of the pocket-book, counted out $100 in bills on the Philadelphia bank, in presence of C., and, by a sleight of hand manœuvre, slipped the money into his coat sleeve, unseen by C., who supposed that S. returned the money to the pocket-book. *ibid.*

An artifice of that nature is within the statute, but should be explicitly stated in the indictment. *ibid.*

A. had dealings to a considerable amount with a bank, for several years, and was usually in the habit, when he deposited money with the receiving teller, and drew a sum out by check, to pass from his desk to that officer in the bank who received the checks and paid the money, with his bank-book in his hand, which he exhibited for the purpose of showing that his account was good at the bank; and sometimes such officer, on receiving A.'s check, would observe to him, in a delicate manner, "I suppose you have deposited sufficient to answer this check," to which A. would answer in the affirmative, and exhibit his book as evidence of the fact. On the day laid in the indictment, A. went, as usual, to the desk of the receiving teller, and deposited $1,209, and from thence, with his book in his hand, passed to the officer who paid out money, and exhibited his own check for $5,450, and also his book. The money was paid, and no question, at that time, was asked him. On a subsequent examination, it was found that the checks of A., presented and paid on the same day, exclusive of the $5,450, amounted to $6,500; and that he had overdrawn the bank to the amount of $10,722 93, on that day. It was held, that A. was not guilty of obtaining money by false pretences, either at common law or under the statute. *ibid*, p. 118.

An allegation, by speech, is necessary to constitute a false pretence. *ibid.*

Quere: whether promissory notes, payable by an individual or corporate body, while in his or their possession, are not embraced within the words, "*or other effects whatsoever*," (1 vol. R. L. p. 410, sect. 13.) *ibid.*

To obtain a gun from the wife, in the absence of her husband, by falsely representing to her, that he had authorized its delivery for the purpose of repairing it, is a misdemeanor within the statute against obtaining goods by false pretences. *ibid*, p. 155.

Where a man of genteel appearance, falsely represented himself as a wholesale dealer in Broadway, and that one of his country customers had sent to him an order for certain goods, which, by means of such representations, he fraudulently obtained; or where he falsely represented that he resided in that part of Broadway inhabited by people of opulence, and by that representation obtained goods; it was held that those were false pretences within the statute. (4 vol. of the City-Hall Recorder, p. 33.)

To sustain an indictment for obtaining money or goods by *false pretences*, it is incumbent on the public prosecutor to show that the false pretence, laid in the indictment, was the *sole inducement* to the parting with the money or goods. *ibid*, p. 61.

(FALSE PRETENCE—PRIVILEGE.)

WILLIAM SHOTWELL'S CASE.

VAN WYCK, *Counsel for the prosecution.*
SAMPSON and DAVID GRAHAM, *Counsel for the prisoner.*

Where an indictment alleged that the defendant falsely pretended that a mortgage, assigned by him to the prosecutor, was good security for the amount of certain goods obtained of him by the defendant, and averred that it was of no value, it was held incumbent on the public prosecutor *to show clearly* that the mortgage was worthless.

In such case, it is sufficient to set forth the substance of the mortgage in the indictment.

The privilege from arrest does not apply to a prisoner, on a criminal charge, who has been discharged from duress of imprisonment.

The prisoner was indicted for obtaining, on the 1st of May, 1817, twenty coats, twenty pair of pantaloons, and twenty vests, of the value of $300, the

goods of Joseph T. Jacobs, by falsely pretending to him that a certain mortgage, purporting to have been executed by one Millard Vandergrift, conditioned for the payment of $325 in gold and silver, dated on the 3d of April, 1815, was good security for $300. The indictment contained the usual averment, that the mortgage was not good security for that sum, but was of no value, the defendant well knowing the same, &c.

It appeared in evidence, that in the month of December, 1816, the defendant, then residing in Sussex county in New-Jersey, came to this city, became acquainted with Jacobs, and was represented to him, by others, as a great capitalist in Hacketstown in that county. At that time he kept a clothing store in this city, and the prisoner applied to him to purchase clothing to carry for sale to the southward. He purchased clothing to the amount of $1,100, assigned the mortgage as payment for $300, representing it to be against a good man, and as good security for the amount; and for the residue he was to pay cash on the delivery. Jacobs, believing the prisoner to be as he had been represented, a capitalist, and relying on his allegation, that the mortgage was good, was thereby induced to receive the bond and mortgage, as cash, and to deliver the property. For the residue, he expected to receive cash in ten minutes from their delivery; but about this time, the prisoner was arrested on a capias at the suit of some other person in this city, for a demand to the amount of several hundred dollars, and applied to, and induced Jacobs to become bail to the sheriff. The prisoner then absconded, and Jacobs was obliged to pay the debt. He heard nothing from the prisoner until November last, when he found him in the jail of Morristown, in New-Jersey, where he was about applying for a discharge under the insolvent law of that state. He was brought into this state in the usual manner, by means of an order from the executive.

After the assignment of the mortgage, Jacobs went to Hacketstown several times, and sent his clerk, and found, on applying to a number of persons, that there was land of that description, but that the prisoner never owned it, and that Vandergrift was a man of no property.

William O. Ford, from New-Jersey, on this point testified, that the prisoner assigned the same bond and mortgage to him, four or five years ago, in payment for a gig; and the witness having ascertained that there was a prior mortgage on the land, and that although Vandergrift acknowledged the justice of the demand, was unable to pay the money, applied to the prisoner, who took back the security and gave his own obligation for the amount.

In the progress of the trial, Sampson raised an objection to the indictment, on the ground that the mortgage was not set forth *in hæc verba*. He said, that in a prosecution for a libel, to set forth the purport of the publication only, as in this case, of the mortgage, would be insufficient; and there was as much reason for that particularity in this species of offence, as in a libel.

Van Wyck contra, was stopped by the recorder, who, in the decision of the court, said, that in a prosecution for a libel, *the offence consisted in the language* contained in the publication, and therefore it was necessary that the libel should be set forth; but in this case, the offence does not consist in the words contained in this mortgage, and therefore its purport or substance, set forth in the indictment, was sufficient.

After the introduction of the testimony, the recorder said, that whatever might be the merits of the case, otherwise considered, the court was not satisfied on the point of the worthlessness of this mortgage. In the indictment it is alleged, that the mortgage *was of no value;* but we do not find this allegation satisfactorily established by the testimony. The prosecutor knows nothing on this point, except what he heard from others; and, although it appears from the testimony of Ford, that there was a prior mortgage on the land, yet it may be (for aught that appears) that it is worth sufficient to pay both mortgages.

Upon this principle the recorder charged the jury, who acquitted the prisoner.

After his discharge he was arrested

on a capias issuing from the supreme court.

Sampson applied to the court to discharge the prisoner from his arrest, on the ground of his privilege in returning from court. In support of his application, he cited the 1st vol. of Tidd's Practice, p. 174, to show that "The *parties* to a suit, and their *witnesses*, are, for the sake of public justice, protected from arrest, in coming to, attending upon, and returning from, the court; or, as it is usually termed *eundo, morando, et redeundo.*" He also cited 1st vol. H. Blackstone, p. 636.

Graham, on the same side, cited the 1st. vol. of Tidd's Practice, p. 306. 9th vol. East's Rep. p. 154, and 1 Caines, p. 116, and argued, that in applications of this nature, an appeal was made to the sound discretion of the court.

Van Wyck contra, was stopped by the recorder who, in the decision of the court, observed, that the privilege for which the counsel for the prisoner contended was that of the court and not of the party. Had the prisoner been at large, on bail, and while returning been arrested, a different question would have been presented; but here he is discharged from duress of imprisonment on a criminal charge: and, in the opinion of the court, he is not entitled to his privilege. If this rested in the discretion of the court, under the circumstances of this case, they ought not to interfere.

His honour referred to a decision of this court, during the term of September, 1816, (1 vol. City-Hall Recorder, p. 138.)

This was the case of George Lynch, tried for a fraud, in pretending that he had money in the bank, for which he drew several checks, which were of no value. After his acquittal, he was arrested on civil process, in a suit brought for the same money, for which he had given the checks. An application was made to this court for his discharge from the arrest, on the ground of his privilege, when the court refused to interfere, and decided, "that the privilege from arrest does not apply to a prisoner discharged from duress of imprisonment."

On the authority of that case the court denied the present application.

SUPREME COURT of JUDICATURE,

of the State of New-York, holden at the City-Hall of the City of New-York, of the term of May, in the year of our Lord 1819.

BEFORE THE HON.

AMBROSE SPENCER, *Chief Justice.*
WM. W. VAN NESS,
JOSEPH C. YATES,
JONAS PLATT, and
JOHN WOODWORTH, } *Justices.*

JAMES FAIRLIE, *Clerk.*

(ARSON—CONSTRUCTION OF STATUTE.)

ROSE BUTLER'S CASE.

VAN WYCK, *Counsel for the prosecution.*
DAVID GRAHAM, *Counsel for the prisoner.*

To constitute the offence of arson, under the statute, it is not necessary that the house should be entirely consumed.

To set fire, designedly, to a house, *then* inhabited as a dwelling house, so that it is completely ignited, is *the wilful burning of an inhabited dwelling house*, within the meaning of the first section of the act. (1 vol. R. L. p. 407.)*

The prisoner was indicted for arson, under the statute, and tried before chief justice Thompson, at the court of Oyer and Terminer, holden at the City-Hall, on the 19th day of November, 1818.

It appeared upon the trial, that the house, alleged to have been burned, was burned in part only, and not entirely consumed. The fire and combustible matter had been placed by the prisoner on the kitchen stairs, two or three of which were, in part, consumed, in consequence of the fire having been placed there by her. The family, consisting of a number of persons, were asleep at the time in the upper part of the house; and, being alarmed by the noise of the fire, awoke, and finally extinguished it. No other parts of the house were consumed.

The prisoner was convicted; and the question reserved for the opinion of the supreme court, was, *whether this was a sufficient burning of the dwelling house to justify a conviction under the statute.*

* That every person, who shall hereafter be duly convicted "*of wilfully burning any inhabited dwelling house*, shall suffer death for the same."

On Friday, the 7th inst. the prisoner was put to the bar, and the case was argued by her counsel.

Van Wyck cited the following authorities: 1 vol. Jac. Law Dict. p. 132. 2d Inst. 188. 1 Hale's P. C. p. 566 and 568, to show that "House burning, which is felony at the common law, must be a malicious, voluntary and an actual burning: not putting fire only into a house or any part of it without burning; but if part of the house is burned, or if the fire doth burn and then goeth out of itself, it is felony. The words are *incendit et combussit*: but if he had burned part of the house, and the fire is quenched or goes out before the whole house is burned, it is felony."

He also cited Dalt. chap. 105, new ed. 506. 2 East's C. L. 1020. 3d Inst. 68. 1 Hawk. P. C. chap. 39, sect. 4. 4th Black. Com. 222, to show that "To constitute arson at common law, there must be an *actual burning* of the house, or of some part of it, though it be not necessary that any part be wholly consumed, or that the fire should have any continuance, but be put or go out of itself. But merely putting fire into or towards a house, however maliciously, if either by accident or prevention it doth not take, and no part be burned, this does not amount to arson at common law."

As to the point, how much of a house ought to be burned, it seems clearly agreed, that neither a bare intention to burn a house, nor even an actual attempt to do it, by putting fire to a part of a house, will amount to a felony, if no part of it be burned. For the indictment must have the words *incendit et combussit*. But it is certain, that if any part of the house be burned, the offender is guilty of felony, notwithstanding the fire afterwards be put out or go out of itself.

In commenting upon the statute Mr. Graham endeavoured to establish two positions:

1. That the word "inhabited," in the act, conveyed an idea of present injury to the inhabitants, occasioned by the burning; and, not exclusively the actual occupation at the time.

2. That the "burning" intended, if not an absolute destruction of the building, at least, the consumption of some important part.

In support of his first position, he argued, that the phraseology of the statute being new, a distinction must have been intended by the legislature which would justify a departure from the ordinary legal language. If their only object had been to designate a house *actually inhabited*, this could have been sufficiently done by using the expression "dwelling house,"—a term used for that purpose from time immemorial.

In the earlier English statutes and authorities, the term "house" alone, was used as sufficiently expressive of the subject of arson. It is thus used in Poulter's case, (11 Coke's 3d Inst. 66. Hale's P. C. p. 126.) Lord Coke defines arson, "The wilful burning the house of another." It corresponds to the *ædes* of the common, and the *domus* of the civil law, (Bract. l. iii. fo. 146.) In the 3d of Henry VII., *crematio domorum* is the statutory description of arson; and, in framing an indictment for that offence, it was unnecessary to add *mansionalis* to *domus*, as in burglary. (1 Hawk. P. C. c. 39, sect. 1. 1 Hale's P. C. 567.)

To distinguish, however, the part of the curtilege actually inhabited, the term "dwelling house" was first introduced in the statute 23d of Henry VIII., and afterwards in the 25th of the same reign, and in the 5th and 6th of Edward VI. Hale distinguishes the "dwelling house" from the parcel, (1 Hale's P. C. p. 570,) as ousting the offender of the benefit of clergy. Coke (3d Inst. 67) mentions the "*mansion house*," clearly intending the house actually inhabited. Chief Justice Wray, (4 Coke's Rep. 40,) in direct opposition to the distinction taken between an inhabited and an uninhabited dwelling house, said, "That if a man has a mansion house, and he and his whole family, by some accident, are part of the night out of the house, and, in the mean time, one comes and breaks the house to commit a felony, that this is a burglary: for though neither the owner nor any of his family be in the house, yet it is *domus mansionalis*." "With this accorded Popham, chief justice, and all the justices."

In our own statutes, anterior to that of 1813, the term "dwelling house" was considered, in regard to a house inhabited, a sufficient description of the subject of arson. It is indeed a "dwelling house," and distinguishable from other buildings only, as far as inhabited; and never can, with propriety, be so designated but in relation to its inhabitants.

But our legislature, intending to create a new capital felony, then, for the first time, found the expression "dwelling house" indefinite; and selected from the different species of "burning" the most aggravated. And why should this aggravation rest in the distinction taken between an *inhabited* and an *uninhabited* dwelling house? And what are the circumstances which *aggravate* in the one case, and *extenuate* in the other? For whether the inhabitants actually occupy the house at the moment of the burning, or not, is immaterial. The circumstances of aggravation arise from the relation between the *premises occupied*, and the *persons* in possession, and cannot be referred solely to the property. And why? Clearly by reason of the terror, hazard, or actual personal injury, to which the inhabitants are subjected; though it cannot be wholly on account of the alarm or hazard, for these are incidents common to all persons in the vicinity of the burning, whether the house set on fire be inhabited or not. The distinction taken, therefore, depends upon the *actual personal injury* which the inhabitants suffer by the burning. Though this actual injury does not often happen, yet it is ever incidental to burning, and when it does occur, gives to this offence its deepest aggravation: and was that alone, which the legislature intended to punish capitally.

2. The "*burning*," mentioned in the statute, means, if not an absolute destruction, at least, *an entire consumption of some important part.*

In the authorities cited by the public prosecutor, (3d Inst. 66; 1 Hale's P. C. 568, and 1 Hawk. P. C. chap. 39, sect. 4,) it is laid down, "That if any part of the house be burned, the offender is guilty of felony." Though this be admitted, yet the doubt remains, and the question still recurs, is this such a felony as the statute contemplates? This, to say the most, is but the common law description of arson, and is by no means conclusive on the construction of the statute. The authorities cited by the opposite counsel maintain the doctrine, that the indictment must allege, that the offender *incendit et combussit*—words far from being synonymous; the former signifying to inflame, kindle or conflagrate; the latter to consume. The one denoting the *cause*, and the other the *effect*. At common law both are necessary to constitute a felony; and, *a fortiori*, under a statute, intended to define and punish the most aggravated species of arson.

It will not be contended, that every burning is comprehended within this section of the statute. If the words of the English authorities are to be taken strictly, the mere scorching any part, however small, would be a burning. If this construction should prevail, no attempt to set a house on fire could be conceived which would not amount to arson; for in every case the surface of the part to which the match is applied undergoes a partial combustion. The question must, therefore, in the last resort, be left to the sound discretion of the court. It never could have been intended, that this statute should embrace every consumption by fire, however partial; for such a construction would defeat the intention of the legislature, which was to give to arson its most aggravated form, and render it equal to treason or murder. Besides, had they so intended, they most probably would have adopted a phraseology similar to that in the statute of the 4th and 5th of Phil. and Mary, which actually specifies a part of the building. But our legislature have described the mischief they intended to remedy, in terms which, in common parlance, would never import the consumption of a very inconsiderable part of a dwelling house.

If criminal statutes are to be rigidly interpreted *in favorem vitæ*, much more ought a statute, intended to take a crime out of a former statute, and inflict the awful punishment of death.

Where, by the law, different punishments are prescribed for the same generic offence, and a rational doubt arises

which punishment ought to be inflicted, it better comports both with justice and humanity to prefer the milder. The next species of arson is punishable with imprisonment in the state prison for life; (3d L. N. Y. p. 129, c.) and when it is considered that in this case a small portion of the building only was consumed, and no person injured, the court, under such circumstances, may be induced to decide, that the offence is not within the first section of the act, which consigns the offender to capital punishment.

On Friday the 14th inst. the prisoner was brought to the bar to receive the judgment of the court.

His honour the chief justice then proceeded to deliver their opinion, of which the following is merely the substance, from memory: After stating the case and the question submitted for decision, he read the first section of the statute upon which the indictment was founded. He said, that the expression in the act, "*Any inhabited dwelling house*," clearly implied, that to constitute the offence contained in that section, it was necessary, not only that the house should be *a dwelling house*, but that it should be inhabited *at the very time* it was set on fire. This construction of the statute was unavoidable from the natural import of its language, and had been adopted by this court.

As to the *degree of burning*, required to consummate this offence, there could be no doubt, but that to set fire, wilfully, to an inhabited dwelling house, so that any part is ignited, or caught on fire, though it afterwards be extinguished or go out of itself, is a sufficient "*burning*" within the statute. This doctrine is supported by the current of authorities in England, and is the law of this country.

The verdict in this case, therefore, must stand, and the prisoner be sentenced.

His honour, judge Woodworth, the junior judge, then proceeded to pronounce the sentence of the court: He expatiated in a brief manner on the peculiar enormity of the offence of which the prisoner had been convicted:—She was a servant in the family—confidence was placed in her, and their lives and property were in some measure placed in her power. By reason of a reprimand from one of the family, she meditated revenge, and intended to involve all in one common destruction.

He concluded with this impressive language, addressed to the prisoner: "You appear to be young. I understand you are quite *intelligent*, and have had the benefit of *instruction*, yet it is necessary that you be cut off from society by an ignominious death. You are now to be sentenced by a human tribunal; but you must shortly appear in the presence of your Creator, who possesses infinite purity and boundless perfection; who will by no means clear the guilty. Death is but the commencement of being—a state of happiness or misery awaits you beyond the grave. You have but a short time to live—*improve that space to prepare to die.* I know not whether you have been religiously instructed, but I know that you live in a country where the Christian religion is acknowledged and revered—send for the ministers of this religion; they will not deny you the benefit of their counsel, instruction and prayers. The Gospel of Christ contains the plan of salvation—one of its divine features is, that it is adapted to the meanest capacity. The great essentials of the word of life are plain and obvious—read and meditate on its truths: repent truly of your sins; pray for the illumination of the Holy Spirit; look for the blood of Christ as alone sufficient to purify you—as the fountain that is opened for sinners. To this I recommend you as the only foundation of hope. Although your sins are great, you need not despair if you cast yourself on the merits of this Saviour with confiding hope and humble trust—'If we confess and forsake our sins, God is faithful and just, to forgive us our sins, and to cleanse us from all iniquity.'

"It now remains that I discharge the painful duty of the court in pronouncing the sentence of the law. You are to be taken to the place from whence you came, and from thence, on the 11th of June next, to the place of execution, and between the hours of 1 and 3 o'clock in the afternoon, be hanged by the neck until you are dead—and may God have mercy on your soul."